1949. **File No.** O/C P.C/49
G.2/49
Legal Deptt.
G. **BRANCH**

Subject:—

Opinions on the Civil Procedure Code 1949

19/E

File No. O/C. P.C/49.

Gen. 194 e.

G.2./49

C O N T E N T S.

Legal Department File No.C/.....

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RM.
A.R.

Office of the R.I.A:

The question for consideration is whether t
action of the Collector of Kanara in rejecting the
auction sale by the Mamlatdar, Sirsi of 5 bags of
wheat flour to Mr. Upendra Ramrao Kamat is covered by
the provisions of Sections 170 and 211 of the Bombay
Land Revenue Code, 1879 and whether the threatned suit
is filed by Mr. Kamat for damages from Government for
non-delivery of the said goods as specified in his
notice under Section 80 Civil Procedure Code is
defensible.

The view taken by the Collector of Kanara that hi
action was covered by the provisions of Sections 170
and 211 L.R.C., is not correct. From the heading of
Chapter XI of the Land Revenue Code, 1879, in which
Section 170 falls, it is clear that the said chapter
deals with the mode of realisation of the land revenu
and other revenue demands. Sale of wheat flour after
the introduction of the policy of decontrol was not
connected with any land revenue matter and the auction
sale ordered by the Collector was not under any statu
provisions but was only under executive orders. No
recourse could, therefore, be taken by the Collector
to Section 211 of the Land Revenue Code for revising
the decision or order of the Mamlatdar in this case.

On merits Mr. Kamat has a good case. The upset
price was fixed at Rs. 27-14-0 per bag and Mr. Kamat's
bid of Rs. 29 per bag was the highest and was accepted
by the Mamlatdar. Section 64 of the Indian Sale of
Goods Act, 1930, provides that in the case of a sale
by auction the sale is complete when the auctioneer
announces its completion by the fall of hammer or in

other customary manner. From the remarks at the end of auction proceedings it is clear that the sale was concluded in the customary manner. The sale was not announced to be subject to sanction from the Collector and the sale was therefore complete though the price was not recovered from Mr. Kamat. The Mamlatdar faile to mention in the Jahirnama the words "in enticipation of Collector's sanction" and the buyer Mr. Kamat is no bound by a limitation of the authority not known to hi ..... KBD 322 Rainbow vs. Howkins. The Collector's Order in setting aside the sale is not therefore valid.

Mr. Kamat has claimed Rs. 461-4-0 (difference betwe the price realized by resale and his bid) by way of damages. Section 57 of the Indian Sale of Goods Act provides that where the seller refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. "The damages which the buyer may recover in an action under this section are in general the difference between the contract price i.e. Rs. 29-0-0 per bag and the market value of the goods at the time when the contract is broken i.e. on 29th March 1948". (pp. 552-553 of Aggarwalla's Sale of Goods Act). The relief claimed is therefore excessive.

As the action of the Collector is legally indefensible, it will be advisable to redress the grievance in this case to the extent as stated above.

Remembrancer of Legal Affa:

U.R. to C.S.D./VIII, No.G/767, Dated 31/12/4

RB.4.8.

Opinion of the R.L.A.

The question raised for the R.L.A's consideration i whether it would be legally feasible for Government to recover the amount of Rs.10,705-14-0 outstanding against the Foregoon General Merchants Association in respect of supply of Punjab wheat, from the amount of Rs.11,813-5-0 which Government has to pay to Messrs. Desai Goods Transpor Co. in respect of some bills of transport, as one Kalidas Bhaichand, a partner of the said Association, is also a partner in Messrs. Desai Transport Co.

2. There were 9 partners in the Foregaon General Merchants Association and Shah Kalidas Bhaichand was one of them. It seems from 2-3-1916 all the partners decided that the responsibility regarding the business of the Associatio was solely on Shah Kalidas Bhaichand from 3-3-1916 and that the others were not responsible for profit or loss incurred by the Association thereafter. It was however mutually agreed that the profit or loss in respect of previous trans actions were to be borne by all the partners according to their shares. As the outstandings due to Govt. are in respect of sale of Punjab wheat in theyear 1914, it seems that in respect of this transaction Shah Kalidas Bhaichand cannot be said to be solely responsible. It is stated that he has paid his share of the loss. The contract of partner ship between the several partners of the Association is not before us, but the Association appears to be a firm under the Indian Partnership Act. Section 25 of the said Act provides that every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. Shah Kalidas Bhaichand is therefore liable to pay the whole amount to Govt. in resp of the sale of wheat and the payment of his share only does not absolve him from his liability to pay the whole debt.

3. However, it would not be legally feasible for Govt. to set off this amount against the amount which Govt. has pay to Messrs. Desai Goods Transport Co. which consists of two partners, of whom Shah Kalidas Khaichand is one. "As a rule a debt owing by one of the members of a firm cannot be set off at law against a debt owing to him and his co-partners; nor can a debt owing to one of the members of a firm be set off against a debt owing by him and his co-partners. And this rule applies even where one partner only has been dealt with, and the debts sought to be set against each other are a debt owing by him and a debt owing to him and other, but arising out of transactions with him alone. To this general rule, which precludes the set-off of a debt due to a firm against a debt owing by one of its members and vice versa, there are a few exceptions. But the case before us does not fall under any of them. (See Lindley on Partnership, 10th Edn. pp.360-367). The same result follows from the provisions contained in Order VIII, Rule 6 of the Code of Civil Procedure read with Illustration (f). The view taken by the District Government Pleader at 'A' of his opinion does not, therefore, appear to be correct.

ID/-P.M.LAD.
12/2

Remembrancer of Legal Affairs.

U.O. to C.S.D.No.G/151, dated Shillong February 1950.

RB.
4.8.

Officers of the R.I.A.

The question for consideration is whether a civil suit should be filed against Mr. Chinnalgund the Proprietor of Shri Krishna Rice Mill at Dommanhalli in Dharwar District for recovery of Rs.361-13-0 (with interest thereon) on account of th balance due from him in respect of the advance of Rs.2000/- given to him for repairing the said Mill.

The advance of Rs.2000/- was sanctioned on 22-12-1915 from the Collector's Personal ledger Account balance subject to the following conditions

(i) That the advance will be charged with interest at 4% per annum.

(ii) After repairs the mill building will be mortgaged to Government and leased to them for the period for which it would be required in connection with storage of grain.

(iii) The amount payble as rent will be adjusted towards the interest and principal of the loa

(iv) That the amount remaining after adjustment as shown in clause (iii) should be refunded within one year from the receipt of the advance or before the supply scheme is closed whichever event takes place earlier.

(v) That the bond embodying these conditions should be registered at the applicant's cost.

As required by conditon (v) above, a registered deed was executed by Mr. Chinnalgund on 12-1-16. Although the condition (ii) of the advance was that the mill building was to be leased to Government for storage of grain after repairs, it is made clear in the registered deed that Mr. Chinnalgund

was allowed to retain the part of the building required for the Mill and the remaining portion was to be rented to Government for the Godown. Mr.- Chinmulgund has so far paid Rs.1635-3-0 in two instalments and he is refusing to pay the balance of Rs.364-13-0 with interest thereon on the ground that this amount should be adjusted against the rent which Government should pay him for the storage of paddy in his mill from 21-2-1947 to 19-8-1947. The Collector contends that the paddy that was stored in the Mill was the paddy which was issued to him in the Mill was the paddy which was issued to him for milling only and no exclusive possession of- any part of the mill building which is necessary to constitute a lease was given to Givernment for storage purposes. In view of this Mr. Chinmulgund is not entitled to any rent in respect of the paddy issued to him for milling and a civil suit should be filed to recover the unpaid balance of the advance. The counter-suit referred to by the - District Government Pleader, if filed, is not - likely to succeed.

Id/-P.M.LAD.
26/7

Remembrancer of Legal Affairs.

U.O.R. to D.C.S.(Accounts), No.G/174 dated 26/2/1949.

RB.

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